UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE:	.	Case No. 23-90147
	.	Chapter 11
	.	(Jointly Administered)
MOUNTAIN EXPRESS OIL COMPANY, et al.,	.	515 Rusk Street
	.	Houston, TX 77002
Debtors.	.	
	.	Monday, August 7, 2023
. . . . .	.	2:24 p.m.

TRANSCRIPT OF SALE HEARING
BEFORE THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY COURT JUDGE

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(Proceedings commence at 2:24 p.m.)

THE COURT: Good afternoon, everyone. This is Judge Jones. The time is 2:24 Central. Today is August the 7th, 2023. This is the docket for Houston, Texas. On the two o'clock docket, we have the jointly-administered cases under Case Number 23-90147, Mountain Express Oil Company.

Folks, please don't forget to record your electronic appearance. That's a quick trip to the website, a couple mouse clicks. You can do that at any time prior to the conclusion of the hearing. It is the way that we note your official appearance.

We've got folks both in the courtroom as well as on GoTo Meeting. For those of you who are in the courtroom, if you rise to speak, if you would please come to the podium. It's the only place that you can both be seen and be heard. For those folks of you who are on GoTo Meeting, a number of you have already hit "five star," but if you do wish to speak, you'll need to hit "five star." Only need to do it once, but you'll need to do "five star." I'll unmute you, and then you can be heard live in the courtroom.

Either way, first time that you speak, if you would please state your name and who you represent, that really does help the court reporter in the event that a transcript request is made.

And finally, this afternoon, we are recording using

CourtSpeak. We will get the audio of this afternoon's hearing up on the docket, available for your download, shortly after the conclusion of the hearing.

And with that, who is taking the lead this afternoon for the debtors? Mr. Pomerantz, is that you? Mr. Wallen, is that you?

MR. POMERANTZ: That is me, Your Honor.

THE COURT: All right. Thank you.

MR. POMERANTZ: Your Honor, can you hear me okay?

THE COURT: Loud and clear.

MR. POMERANTZ: Can you hear me okay?

THE COURT: Yes, sir. Thank you.

MR. POMERANTZ: Good afternoon, Your Honor. Jeff Pomerantz of Pachulski Stang Ziehl & Jones, on behalf of the debtors. Appearing from my firm, with me virtually in the courtroom, are Max Litvak, who will handle the evidentiary aspects of today's hearing, Mr. Wallen is in court, and Mike Warner is on the phone.

Also appearing are the debtors' chief restructuring officer, Michael Healy from FTI, and Geoff Richards, the senior managing director of Raymond James, the debtors' retained investment banker. And they will be, Your Honor, two of the debtors' witnesses for today.

Your Honor, on Friday evening, August 4th, the debtors filed their notice of successful bid at Docket

Number 1192 and the notice attached a letter of intent between the debtors and GPM Investments, LLC, a subsidiary of ARKO Corp., which described a going-concern transaction pursuant to which the debtors would seek to sell substantially all, but not all, of their assets for a gross purchase price of $49 million, with $18.5 million of that amount coming from Oak Street, the debtors' master lessor, who controls more than half of the debtors' locations.

I will refer to this today as the "ARKO/Oak Street transaction." The initial document that was filed on the court was not signed; but when we filed our amended exhibit and witness list, a signed version was actually filed.

As you'll hear, Your Honor, the ARKO/Oak Street transaction is actually an integration of two transactions which have and continue to require a careful balance of efforts for the benefit of all constituents. The ARKO/Oak Street transaction will preserve thousands of jobs, hundreds of small businesses, maximize going concern value for the benefit of all stakeholders, and was the result of an extensive and extremely complicated sale process which culminated in a successful auction process which spanned August 2nd to August 4th.

In a few moments, I will describe the sale process and the auction in more detail. And, Your Honor, when I use the word "successful" in talking about the auction, we use it in the manner that the assets were market-tested under an

extensive process. The ARKO transaction, we believe, is supported by the debtors' major landlords, the debtors' employees, and we believe will be supported by all of the oil companies, a substantial -- and a substantial majority of dealers.

The lenders have not supported it, as Your Honor is fully aware, and the Committee has filed a response indicating they need more information before they can take a position.

As we said in the notice, Your Honor, we are not seeking court approval of the ARKO/Oak Street transaction at today's hearing. Rather, we are reporting to the Court on the ARKO/Oak Street transaction in response to several actions that lenders have taken over the last several days which challenged the debtors' ability to proceed to document the ARKO/Oak Street transaction and proceed with closing the sale.

The timeline, Your Honor, is quite telling. On July 21st, the deadline for submission of bids pursuant to the bid procedures order, the debtors received 12 bids. Thereafter, the debtors received an additional four bids, for a total of 16. None of these bids, however, were "qualified bids," as that term is defined in the bid procedures order.

Importantly, of those 16 bids, none of them were from the lenders who were required to submit a credit bid by July 21st. Your Honor recalls in the bid procedures order, all they had to do was send a letter. They didn't have to send

documentation saying that they were willing to credit bid. They did not.

On July 24th, the debtors' professionals made a presentation to the lenders regarding the 14 bids that were received at that time. And at that meeting, the debtors' professionals recommended that the lenders agree to continue the auction from July 28th to August 2 to allow the debtors' professionals to continue negotiation with the bidders in the hopes of qualifying as many bidders as possible.

Although the debtors -- although the lenders rejected the debtors' request to continue the auction, the debtors did so anyway (indiscernible) they were permitted to do so under the terms of the bid procedures order and because they determined that in the absence of any qualified bids, it would have been impossible to conduct an auction on July 28th.

The debtors filed their notice continuing the auction to August 2, which appears at Docket Number 1099. And on the evening of August 1, the debtors met with the entire lender group and updated them on the status of the negotiation with bidders heading into the auction. In fact, we tried to meet with the lenders' professionals in person if they were in New York. They refused. And only after we took the initiative of calling a meeting with all the lenders did we have that forum.

And at that time, Your Honor, the debtors informed the lenders that they had received a proposal from ARKO and

Oak Street which would fund the debtors' operations prior to close -- which would fund the debtors options [sic] prior to close, not require another penny from the lenders, and pay the lenders $10 million net of closing costs the debtors believe would be required to be paid as a closing of the sale plus leave the lenders with owned real estate as well as certain claims against the estate which the lenders had indicated that they wanted to pursue.

The debtors at that meeting asked the lenders that if the $10 million was insufficient that they should come back to the debtor and say what amount would be sufficient to support their consent so that the debtors would have a target at the auction the next day.

After the lender meeting, Your Honor, one of the lenders in the syndicate, Bank of Hope, sent an email to Geoff Richards of Raymond James stating that if we think -- "if we all think this business is going to be sold for $10 million, I would rather take chances in 7 and see all burn." That letter, Your Honor, is Document Number 7 in our witness and exhibit list, which is at Docket 1197.

The debtors have subpoenaed Mr. Marshall, the Bank of Hope representative and the author of the "burn" email, and intend to call him as a witness during the evidentiary portion of today's hearing.

On August 2nd, the parties convened in the Raymond

James office for the auction. Prior to engaging with the bidders and other interested parties, the debtors asked the lenders if they had decided on a target for the debtors to shoot for that would be acceptable to the lenders. The lenders' response? They would need to receive $150 million in proceeds to consent to a sale. That response affirmed -- reaffirmed what the debtors have experienced from the lenders throughout these cases: they could not count on the lenders to be constructive in the process.

The debtors' professionals spent nearly all day on August 2nd and August 3, meeting with all of the bidders and the major landlords to work with them to try to maximize value. And I will discuss in a few moments some of the dynamics of the auction process that made it extremely complex, and I will explain the results that came out of the auction process.

While constructive negotiations were ongoing with the bidders and landlords, on August 3rd, the lenders concurrently took a number of destructive actions, deciding to end the case. On August 3rd, the lenders declared an event of default and issued a carve-out trigger notice under the DIP order, which terminated the debtors' use of cash collateral.

What was the default that was declared by the lenders? Failing to conduct the auction by July 28th and continuing it until August 2, a restriction in the DIP agreement, but not the bid procedures order. Yes, Your Honor,

that was it, a five-day continuance of the auction.

On August 3rd, the lenders sent the debtors a notice of the occurrence of maturity date, at Docket Number -- at Docket Number 1197, in our witness and exhibit list, Number 4. And on August 3rd, the lenders filed with the Court notice of occurrence of the maturity date, which is Exhibit 5, at Docket 1168.

The public notice, as would be expected and probably intended, had adverse consequences for the debtors. Several of the debtors' major oil suppliers reached out to the debtors immediately, concerned about the debtors' viability. The debtors explained to the oil suppliers that unless the lenders froze the debtors' accounts, thereby causing automatic drafts to bounce, action that required relief from the automatic stay, the oil companies would be paid for fuel.

Based on that explanation and the understanding that the debtors today would be asking the Court for the green light to proceed with the ARKO/Oak Street transaction, the oil companies did not take any action, although certain have since put the debtors on credit hold.

At the end of the day, after August 3rd, after exhaustive discussions with the bidders, the debtors met with the lenders and informed them that they believed that the ARKO/Oak Street transaction could be structured to provide a recovery of $20 million, double the projection from August 1

that resulted in the "burn" email. And importantly, the debtors would not require any new financing from the lenders to close the transaction, and the transaction would leave the estate with the real estate and litigation subject to the lenders' lien, to monetize for the lenders' benefit.

The lenders' response, their last, best, and final offer, they needed to be paid approximately $47 million, which was the amount of the new money advance post-petition. They told the debtors' professionals that this was best, last, and final, and not to come back with any other offer.

In the morning, on August 1st, lenders' counsel emailed me that they would be filing a motion to convert the cases to Chapter 7. We have not seen any such motion hit the docket. However, the lenders' behavior during the last few days was consistent with the August 1 proclamation from the Bank of Hope that they preferred to see the estate burn.

Although the lenders try to distance themselves from that email in their response to cash collateral, they may have been the only one that sent the email, but it's pretty clear that the majority group of lenders feel that way.

During the day on August 4th, the debtors reached a tentative agreement in principle with ARKO and Oak Street with respect to the ARKO/Oak Street transaction, and I will describe those terms in detail in a few moments.

The debtors went on the record on August 4th, at

6 p.m., declared the ARKO/Oak Street transaction as the winning bid; Docket Number 1197 -- of our witness/exhibit list, Number 3. And on August 4, as I mentioned, the debtors filed their notice of successful bid, and their notice of status conference report is at Docket 1194, which outlines how we got to this point, much of which I am going over today.

The lenders have told the debtors that they believe they have the unfettered right to say no to any further use of cash collateral and that the debtors can't do anything about it. We believe, Your Honor, it is the Court, not the lenders, who will have the final say on whether a sale should be approved and whether the proposed transaction is in the best interest of creditors.

What we are asking for from the Court today is a determination that the Court has the discretion to approve a sale, notwithstanding the lenders' refusal to consent. If the Court answers that question in the affirmative, we will then ask the Court for authority to use cash collateral for a one-week period while we work to document the terms of the ARKO/Oak Street sale transaction.

And on August 5, we filed an emergency amended motion for use of cash collateral, seeking authority to use cash collateral for one week. And that amended motion is at Docket Number 1196. We then asked the Court for a continued hearing on Monday, August 14th or thereabouts to consider approval of

the ARKO/Oak Street transaction, to address the objections that have been filed thereto. And we hope in the interim, at least as it relates to the Committee, to answer any unanswered questions they have.

If the Court declines either of the debtors' requests, we would ask the Court to issue an order why these cases should not be dismissed, as opposed to converted, as threatened by the lenders (audio interference) set a hearing for later this week. And as I will discuss towards the end of my presentation, if the case is going to liquidate under these circumstances, we believe that the Bankruptcy Court is not the appropriate venue for that process.

During the course of my presentation, I am going to provide a detailed background of how we got here. While the sale is just a status conference, we also have the cash collateral motion. So I will seek to put on the evidence of Mr. Healy and Mr. Richards, as well as the bank representatives, to support the factual statements that I'm going to go into a little more detail now.

I would like to take the Court back to the time leading up to the filing of these cases. These cases did not have a soft landing into Chapter 11, as I'm sure the Court will recall. Pachulski Stang and Raymond James were retained approximately a month before the filing, and FTI was retained two weeks before the filing.

As the debtors' professionals were learning about the company, they lended -- they encountered a lender group which was, apparently, according to them, caught off guard with the debtors' financial distress and unwilling to provide debtors with debtor-in-possession financing.

It's hard to believe that they were really caught off guard, Your Honor, because prior to the petition, they had provided notices of default for lack of recordkeeping and they had not received financial statements for some time. So they were not caught off surprise. Maybe they were asleep at the switch, but they were not caught off surprise.

The debtors' professionals warned the lenders that a free-fall filing with no DIP funding in place was a very bad idea and that the oil companies would likely immediately shut off the debtors' fuel supply. Notwithstanding these warnings, shockingly, the lenders refused initially to provide DIP financing commitment, and the debtors filed these cases on March 18th without any financing.

As a result, the debtors immediately faced an unforced error of a liquidity crisis upon filing. It reduced fuel shipments to suppliers, which strained relationships with dealers and caused an upheaval in an already chaotic business climate.

As Michael Healy, the debtors' CRO, has told the Court and will tell the Court again today, the debtors have

been playing catch-up ever since and have not fully recovered from this disruption. We are not by any means saying this is the sole cause of what brought us here today, but it sure didn't help.

After the Court authorized one-week use of cash collateral, the lenders agreed to provide a limited amount of debtor-in-possession financing to run a four-month sale process, including an accelerated closing time frame. Importantly, the lenders extended such financing only after the debtors had obtained a commitment for a priming loan from a third party, which would have provided the debtors with the financing they needed.

So the lenders could have allowed the sale process to proceed with alternative third-party financing. But they did not, and they chose to support the sale process culminating in last week's auction.

While the debtors hoped that the financing and timeline would be sufficient to maximize value in the sale process, the debtors' professionals at that time did not fully appreciate the information challenges they would encounter during these cases. More on that later.

So, in April, the debtors asked the lenders for $9.35 million of additional financing to extend the sale process for another month. Again, the lenders balked. The debtors obtained an alternative priming commitment, and the

lenders ultimately relented.

This was the second time that the lenders could have limited their exposure and been in these cases without any additional financial commitment. They refused and advanced new money pursuant to the final DIP order entered on April 25th. Certain waivers and an additional $9 million of financing followed, for a total of approximately $46.85 million advanced.

To be sure, throughout the process, the debtors kept the lenders fully up to speed regarding the sale process, information challenges faced, and the feedback regarding the bids. And Mr. Richards will testify that there were no less than 12 different reports, formal reports provided to the lenders and their professionals, in addition to the numerous other conversations and meetings that were had, including weekly meetings that were established early on in the case. So throughout the process, Your Honor, the lenders knew full well what they were lending into.

As I mentioned, Raymond James was hired on February 10th, approximately a month before the filing. And because the debtors were prepared -- were forced to prepare for an emergency filing, all efforts during February and the first month of March were directed towards trying to obtain a forbearance from Oak Street, trying to shore up liquidity, trying to understand the case, and prepare for what ultimately was a very chaotic free-fall filing.

It did not really become apparent until soon after the cases were filed that a sale process would be required. It was then that the marketing began in earnest. Unlike most cases that come before Your Honor, this was not a case where the marketing process was baked for three full months. This was literally a standing start at the beginning of the filing.

Why was Raymond James hired? It was hired because it has a C-store vertical group that is best in class and has been involved in more than 80 transactions in the industry, and because of Mr. Richards' substantial restructuring experience and that of his team of 25 bankers. The robustness of the marketing process that I will describe momentarily demonstrates that Raymond James was the right investment bank for these cases.

Commencing at or around the filing, Raymond James contacted 142 potential buyers, comprised of 103 strategic counterparties and 39 financial (audio interference) parties. Nine parties submitted preliminary nonbinding indications of interest in connection with an initial May 8th deadline.

In response to the end of -- response to the June 6th deadline to submit letters of intent, Raymond James received letters of intent from several parties; and on June 16th, the debtors filed its procedures motion, which the Court entered on June 22nd. And that's at Docket Number -- Docket 701.

As the Court will recall, the lenders insisted on all

sorts of controls in the sale process which would have prevented, in the debtors' opinion, its ability to exercise their fiduciary duties and to run the process that they believed was the best way to maximize value. After the debtors pushed back, the lenders relented and didn't press most of their objections at the hearing.

The bid procedures order established a bid deadline of July 21st and scheduled an auction on July 28th and provided for the sale hearing today. Importantly, at the hearing, the Court was very clearly told that the lenders -- the Court very clearly told the lenders that they could either be a bidder or a consultation party and that they would have to submit a credit bid by July 21st. And as I mentioned, they did not do so then or at any other time.

Notwithstanding their intentional failure to submit the timely credit bid, the lenders would not, until pushed at the auction, acknowledge that they had relinquished such rights under the bid procedures order. And this is important, Your Honor, because ultimately, submission of a credit bid is the lenders' right and check to make sure the assets are being sold at fair value. Intentionally skipping the credit bid deadline and then rejecting a sale that was market-tested by an auction process, in favor of liquidation and a preference to burn the estate, is not how the Bankruptcy Code is supposed to work.

As of mid-June, 51 parties signed NDAs and received access to the data room and, ultimately, 71 parties signed NDAs, which Mr. Richards will testify is a very high yield percentage of the parties that were reached out to. They also had calls with more than 200 parties and 54 different parties -- more than 200 calls with 54 different parties to facilitate diligence requests. And ultimately, he will tell Your Honor that this M&A process has been one of the most, if not the most, challenging in his career.

While the debtors often have various operational and informational shortcomings, the state of the debtors' financial records in these cases and the ability to provide parties and bidders with basic financial information was unlike anything he has ever seen.

Example of some of these financial challenges facing Raymond James as it conducted in the sale process were: the debtors lacked complete and current financial statements. The most recent audited financial statements were for the period ending December 31, 2021.

The debtors were unable to generate accurate and current store-level profit and loss statements; fuel gallon and margin data; and in-store financials such as inventory levels, product pricing, fuel sales, and payroll expense, among other issues.

The debtors lacked complete historical information

about store-level environmental and zoning compliance. The debtors were missing leases, contracts, and other agreements integral to the management of their business, and they did not maintain detailed store-level accounting on unamortized fuel branding discounts and rebates provided by major oil companies and related store-specific imaging liabilities.

Your Honor, it wasn't only the lack of this financial information, but the inability to provide this financial information led a number of parties to be concerned that they were buying into unknown liabilities.

Now, Your Honor, I read the lenders' opposition to cash collateral filed a couple of hours before the hearing. And I've learned very early on in my career, and from Your Honor, that lawyers should not make allegations that somebody is hiding things or committing malfeasance unless they have the facts to back that up.

But that's exactly what the lenders did in this case. They filed an opposition where they say in two places that we hid information from them, from the creditors, and from the Court. That, Your Honor, is categorically untrue. There will be never any way for the lenders to prove that, and that is just unprofessional.

Rather, the evidence will show that the lenders knew of the financial issues before the case, and when Raymond James, FTI, and Pachulski came in, we were not shy in sharing

the concerns with the systems and the procedures. In fact, Your Honor, that is why the sale process was continued -- was extended from four months to five months. And in fact, the lenders had authorized the debtors pre-bankruptcy to bring in Grant Thornton to start working to put together information.

The deficiencies, again, prevented basic financial information from being provided, but nonetheless, numerous parties remained interested in the process in the hope that the debtors would be able to produce meaningful financial data. And as I mentioned, the debtors had retained Grant Thornton to help in that regard.

But post-petition, the lenders were counting every penny, and they questioned, why is Grant Thornton being retained? And there wasn't any assurances that Grant Thornton would be paid. So they, in fact, had to wait until after budgets were approved and their ordinary course retention was approved.

So, ultimately, they were retained, but their start date or their continuation date was put back a few weeks. They ultimately worked three months in interest -- in earnest to try to put together information and were making good progress until July 17th, when the lenders said, Grant Thornton, pencils down, we don't see your work having meaningful impact on the sale process.

So while they had made substantial progress in making

sense out of the books and records, they ran out of time. Not saying, Your Honor, here, if they had the other two weeks, the auction would have been different, but it was indicative of the lenders' approach, in this case, shutting down Grant Thornton, which didn't help things.

So that was the primary reason, Your Honor, that we were not able to reach an agreement with a stalking horse. There was just too much uncertainty, too much lack of financial information. But, as I said, the debtors did receive a total of 14 bids, two of which were submitted after the July 21st deadline and subsequently another two bids after that, so a total of 16. But, as I mentioned, none of them satisfied the requirements in the bid procedures for qualification.

The auction was then continued to August 2nd, as I mentioned, to further consider the group and qualify the bid. The parties convened at Raymond James office in August 2nd for the auction. And after the lenders communicated to the debtors an unrealistic $150 million release price for their consent to the sale, the debtors realized they were on their own and would endeavor to generate the highest and best value for the debtors' assets and then present it to the lenders to get their reaction.

So, over the next two days, the debtors' professionals conducted round-the-clock negotiations with several parties for various parts of the business and several

landlords who were parties to master leases with the debtors. The purpose of those discussions was to see if the debtors could cobble together bids or groups of bids that could compete with a whole company bid or provide more value than the whole company buyer was willing to pay. Essentially, the parts are greater than the whole strategy.

During the process, which lasted more than two and a half days, the debtor provided the lenders and the Committee with updates. I understand the Committee feels they weren't provided with sufficient updates. We endeavored to keep them all informed. Could we have done a better job? Maybe, Your Honor. But in fact, when we were talking about a deal that would pay half of the DIP facility, at the end of the day, there would not be any recovery for unsecured creditors under any circumstance. Not a reason not to include them in the process. If we could have included them more, bad on us. But as I'm sure Your Honor is getting a flavor for what was happening in those two days, this is a chaotic and a fluid situation.

But you'll hear from Mr. Elrod that the debtors didn't consult often enough with the lenders and shut them out of the process. And that, in fact, will be false and inconsistent with the facts. We met with them a few times. But seriously, when the lenders said they insisted on $150 million to support the sale, it was a clear message that

they were not going to be a constructive part of the process, but were there sitting patiently, waiting for this case to fail.

The two-plus days the debtors spent with all of the bidders and landlords revealed some harsh realities which affected the values the debtors could receive from their assets. First, the bids other than the WholeCo bid overlapped materially, making it virtually impossible, since most parties did not allocate value to individual assets, to assess realistically the realizable value of the aggregate of those bids.

Second, many of the bidders' contingencies relating to lease concessions could not be satisfied.

Third, because the debtors were unable to break their master leases with Oak Street and the debtors' other landlords without their consent, the debtors had no ability outside their consent to sell partial lots. And in fact, if you aggregated all the partial company bids, it only amounted to 38 percent of Oak Street's leases. So, not surprisingly, Oak Street preferred an alternative that would deal with its entire portfolio as opposed give more than 60 percent of its properties back.

And fourth, Your Honor, ARKO, the only party submitting the WholeCo bid, declined to carve assets out from its bid in order to allow the debtor to sell those assets to

other bidders as a means of potentially increasing value.

And lastly, Your Honor, several parties required material time to reach a closing of (audio interference) transactions and were not providing any liquidity in their bids to make that happen, and the debtors did not have that liquidity.

As a result, Your Honor, the debtors' only viable alternative was to negotiate the best possible transaction with ARKO and Oak Street (indiscernible) their liquidity needs prior to closing. Much of August 3 and August 4 were spent negotiating the LOI, which is before the Court today. And after a lot of hard work, the debtors reached agreement with ARKO and Oak Street, the principal terms which were reflected in the letter of intent attached to the notice of successful bid, and they are as follows:

ARKO will pay the debtors approximately $49 million for substantially all of the assets. I'm not going to sit here today, Your Honor, and tell everyone to take $49 million to the bank. However, when Mr. Healy gets on the stand, Your Honor, he will tell the Court that, based upon the assumptions and based upon conversations with landlords and others, he thinks we have a good shot at reaching that amount or somewhere close to it.

Excluded from the sale will be cash on hand, prepetition litigation claims, and the debtors' own real

estate. Upon execution of the asset purchase agreement, execution of the agreement and approval by the Court, which we hope to occur as soon as next Monday, the debtors will receive a nonrefundable 13 and a half million dollar deposit to be used to fund operations pending a closing of a transaction which is scheduled to close on or before October 31st.

Oak Street is funding the 13 and a half million dollar deposit upon Court approval and funding an additional $5 million at closing; and agreeing to defer all rent for August, September, and October; and agreeing to restructure its leases with ARKO post-closing.

Two items on the Oak Street aspect of the transaction: First, there seems to be a serious disconnect with the lenders, because when they filed their exhibit and witness list today for the cash collateral motion, they took a deduct of $18.5 million payable to Oak Street upon closing. That is incorrect. Oak Street is putting the 18 and a half million in, it's deferring its rent, but the rent deferred is going to be part of the new ARKO restructured leases. There will be zero rent paid to Oak Street, so it is not in any way a deduct.

But second, Your Honor, I stood before Your Honor at the beginning of this case, and I said one of the principal reasons that we were here is because of aggressive actions that Oak Street had taken to force the debtor into bankruptcy. And

I don't shy away from those comments, Your Honor. Mr. Healy doesn't shy away from those comments. What the lenders and the Committee both say is, wow, there must be tremendous claims against Oak Street that the debtors would be giving up by doing a deal with Oak Street and giving them a release.

Your Honor, Mr. Healy will not say that he's investigated the claims, but what Mr. Healy will say is that, subsequent to the filing, when we expected Oak Street to be the significant protagonist in this case, they have not. True, they've been paid their rent, but they have not made trouble by calling in all the defaults, environmental or anything that they could have raised with the Court, with respect to their properties. They have sat and waited to see how they could be helpful in an ultimate restructuring.

So, yeah, we have not conducted a full, fair investigation of the claims. Are there claims that exist? We don't believe so, based upon what we know. But neither have the lenders or the Committee done any investigation.

So, at some point, Your Honor, this case will be at a threshold and a crossroads. Your Honor will have to decide. Is this case going to be a litigation case where people are going to roll up their sleeves, probably hire people on a contingency basis, no money to prosecute these claims, and make it all about the claims against Oak Street? Or is Your Honor going to look at the 13 and a half million they're paying on

signing, the five additional million they're paying, and the 17 and a half -- 17 to 22 million, depending on when the sale closes, either at the end of September or October, as sufficient consideration, given where we are today?

And again, that's not necessarily here for Your Honor to decide today. That will be for Your Honor to decide at the ultimate sale hearing. But it is clear, and there will be no dispute, that without Oak Street's support and participation, we would not be here with an ARKO/Oak Street transaction. We would not be here with a potential going-concern sale to save thousands of jobs, business relationships, and vendor relationships, and we would be liquidating.

Your Honor, the remainder of the 30 and a half million dollars of the purchase price, which is the 49- minus Oak Street contribution, will be paid at closing by ARKO based upon the following: an estimated $13 million for all the debtors' fuel and non-fuel inventory; an estimated $15.25 million of the debtors' travel centers and fuel supply business based upon the fuel supply business generating 119 million gallons of fuel per year; $2 million for any money collected by the debtors in connections with its claims to Imperial and GSS.

Interestingly, we asked ARKO to buy the claims because, although we are owed several million dollars more, we thought we were doing the lenders a favor and increasing the

purchase price so they wouldn't have to fund the litigation and they could get a recovery. In the lenders' liquidation analysis, in opposition to cash collateral, they say that they think that the claims are worth four and a half to $6 million.

So we are happy to go back to ARKO, ask them to carve those claims out of the transaction and reduce their purchase price by $2 million. I suspect ARKO would agree to that. And if the lenders want that, that's another asset that they could prosecute.

Your Honor, the 13 and a half million dollars of cash that is being provided to the debtors to fund preclosing operations, and which will be subject to a cash collateral motion next week to cover the period through October, is based upon the amount of liquidity the debtors need to supplement the cash generated by the business to pay operating expenses and professional fees with a couple of important caveats: First, it assumes no rent payments to Oak Street, Vereit, and Spirit through October 31st closing.

Oak Street, which represents more than 50 percent of the debtors' monthly rent expense, has agreed to the treatment. And the others -- other two REIT landlords, Vereit and Spirit, have also indicated a willingness to do so.

With respect to the non-REIT landlords, Your Honor, the debtors intend to send out a letter to all of its non-REIT landlords informing them that its leases will be rejected as of

August 31st, unless the landlords defer rent, restructure their leases in the matters contemplated by the letter of intent, waive cure payments, and agree to extend the time to assume and reject their leases until October 31st.

Faced with the task of taking back their leases, the debtors anticipate and the cash flow projections contemplate a substantial number of landlords agreeing to this deal. And, in fact, it assumes that 50 percent of all non-REIT landlords will agree to the Oak -- ARKO/Oak Street transaction.

To make the numbers work, Your Honor, Pachulski Stang and FTI have agreed to reduce their run rate to closing below the amounts that they believe are necessary to close the transaction, in the aggregate amount combined for Pachulski and FTI of $700,000. And as I will discuss in a couple of moments, Raymond James is agreeing to reduce his M&A fee by $1 million at closing.

Your Honor, the lenders made a big issue in their opposition to cash collateral regarding the debtors' financial performance and projections in this case. They say, which is a complete mischaracterization, that the debtors have missed projections in the last 15 of their 18 reporting periods. But in fact, as I will mention when I get to the cash collateral presentation, that for the last eight weeks, the debtors not only have been spot on in net fuel, in operating expenses and cash flow, they have exceeded.

So, yes, at the beginning stages of the case, the debtor was hit with a lot of problems from their landlords and from their dealers. That's litigation, a lot of which has been brought before Your Honor: Imperial, GSS, VM Petro. So, yes, that caused the debtor to miss the projections. But once things were smoothed out, actually, projections have been pretty accurate.

If the debtors' operating cash estimates actually prove conservative, any excess will be paid to the lenders, increasing their recovery after Raymond James recaptures its million-dollar fee that it is deferring or waiving. And if the debtors' estimates hold up at closing, which they believe they have a fighting chance to, they will receive $35.5 million at closing. Of that amount, they would pay approximately $10 million on account of post-petition taxes -- as Mr. Healy will let Your Honor know that he believes, as a CRO, a debtor should be paying its post-petition taxes; $4.6 million to Raymond James, which consists of a portion of its DIP fee that has been deferred and its reduced M&A fee; $230,000 on account of the KERP the Court has approved; and a few hundred thousand in miscellaneous costs. And the net result would be an estimated $20 million to the lenders.

While these numbers are based on estimates, we think we have a shot at achieving them. But we're not going to (audio interference) Your Honor and say they could take that

$20 million to the bank. What we will tell Your Honor is that that vastly exceeds what they would receive in a liquidation.

So this is the transaction. So what are the benefits to the estate? The transaction saves thousands of jobs, scores of family businesses that rely on the debtors' businesses; preserves tenants for the debtors' landlords and preserves fuel outlets for the oil suppliers; and a going concern to continue to do business with various unsecured vendors. The sale carves out cash on hand, owned real estate, certain prepetition litigation claims, and if the lenders want, the post-petition litigation claims against Brothers to provide additional recovery to the lenders.

Importantly, the lenders do not need to extend any new financing to consummate the transaction. All they need to do is allow their cash collateral to be used, cash collateral which would not be generated if the debtors ceased operations. The debtors' judgment is that this deal is in the best interest of the estate.

Do we have a lot of wood to chop between now and getting to a final APA? Absolutely. Your Honor has known as a practitioner, that getting from an LOI to an APA is not an easy task. Should we all try to do that to preserve this company? The lenders -- the debtors' professionals answer that in an unequivocal yes.

So what stands in the way of this transaction? The

lenders. Why? They would rather see the cases liquidated. I'd refer the Court back to Mr. Marshall of Bank of Hope's email to Mr. Richards on the eve of the auction. He said he would rather take his chances in Chapter 7, and see all burn, rather than receive $10 million in real estate recovery.

As the lenders are persisting in their position, they obviously have the same view, even under a transaction that has doubled the recovery to $20 million. The lenders apparently have this view because they believe a Chapter 7 would generate a better recovery, and they have put Mr. Tibus on their witness list, and they have added a liquidation analysis.

We, in the evidentiary portion of this hearing, Your Honor, will clearly demonstrate that their liquidation analysis is inaccurate, it's overstated, and it's wildly optimistic. Mr. Healy, who has been living with this company for five months, will walk the Court through the liquidation analysis to show that if the taxes are paid and other closing costs are paid, there will be zero, zero recovery. (Indiscernible) there's a source of funding for the Chapter 7 trustee to run whatever liquidation process the lenders apparently have in mind.

In their liquidation analysis, they say Chapter 7 professional fees will be a million to a million and a quarter. They should know better than that. Your Honor knows that in a conversion, in a case of this size, of this complexity, it will

cost multiples of a million to a million and a quarter for the lenders' professionals, in addition to pursuing the claims that they say they have.

And the lenders conveniently ignore that if the Court was to convert the case, I suspect the Court would consider first terminating the leases so that the landlords could take back their properties, some of which are in disrepair, rather than let a lengthy Chapter 7 process go on. Your Honor, there'll just be very little to monetize and no funding to do so. And we will demonstrate that by the evidentiary record.

The only persuasive evidence presented today will be from Michael Healy, who will testify, as I said, in a liquidation there's zero, as opposed to a going-concern transaction where they have a realistic shot of $20 million.

The lenders really are apparently content to rely on what they believe is their unilateral right to veto a transaction that they do not like, relying on Paragraph 11 of the DIP order, and destroying the value and shutter a large business with all the collateral damage that comes with that reckless decision. And the lenders are content to rely on what they believe is the debtors' inability to seek to use cash collateral under Paragraph 11 of the DIP order.

From the lenders' perspective, essentially, that is the beginning and the end of the argument. But they are wrong, Your Honor. Under Paragraph 22 of the final DIP order, the

Court expressly reserved the right to fashion an appropriate remedy on the determination that an event of default occurred and the lenders get relief -- seek relief from stay.

I've been before Your Honor many times, and I know Your Honor insists on that language because Your Honor does not want to be hamstrung on what happens when an event of default occurs. The Court's equitable power, taken together with its powers under Section 105, provides the Court with discretion to fashion appropriate relief, which in this case would be to authorize the debtor to proceed with an economically, rationally, market-tested sale.

Second, Your Honor, Rule 60(b) of the Federal Rules of Civil Procedure made applicable to bankruptcy cases under Bankruptcy Rule 9024 provides the Court with authority to relieve the debtors from the requirement to obtain the lenders' consent to a use of cash collateral or a sale.

60(b)(6) provides for relief from a judgment for any other reason that justifies relief. And the Fifth Circuit cases we have cited in our materials, the Hesling and Harrell cases, say that "60(b)(6) is a grand reservoir of equitable power to do justice in a particular case" where relief is not warranted under other sections of Rule 60(b). So Your Honor doesn't have to rule on 105, and courts generally tend to not like only to rule on 105. Here, Your Honor, has Rule 60(b)(6).

And as the Fifth Circuit has said, "The broad

language of Clause 6 gives the court ample power to vacate judgments whenever such action is appropriate to accomplish justice."

And there is authority in the Pan Am case, district court from New York, Southern District, in the '90s, cited in our amended cash collateral motion, that if the court wants to amend a financing order, 60(b)(6) is the appropriate vehicle to seek to do so. And in that case, Judge Blackshear had amended a DIP financing order but didn't go through the analysis of 60(b)(6). And the lender said you can't do it, and the District Court said you can, you've just got to go back to Bankruptcy Court and have Judge Blackshear make the appropriate findings.

Your Honor, we don't make this argument lightly. We understand the sanctity of court orders and that the Court's ability to override the lenders' consent would only be justified in extraordinary circumstances. But these cases provide those extraordinary circumstances. The debtors indisputably ran a thorough and robust sale process.

The Committee makes a comment that the process was doomed to fail at the beginning. With all due respect, we disagree. We find, as the Court finds, debtors as they are. This debtor has its challenges. We ran a process. The process produced a market-tested result. It worked. Did we get as much value as people would have hoped? Of course not. Was it

a market-tested process? Yes, it was.

The ARKO/Oak Street transaction is a going-concern sale. As I said, will save thousands of jobs, hundreds of businesses, tenants for landlords, and provide the lenders with an estimated $20 million in cash, plus leave the estate with claims to be further modified -- monetized. And we say the evidence that will be presented, Your Honor, is that the transaction will generate significantly higher recovery than a Chapter 7, which we believe would generate the zero recovery. And the debtors have the financing to approve -- to go to closing this transaction without further new money from the lenders.

The lenders are inexplicably refusing to approve the transaction, with one lender representative saying he would rather see the case burn. Your Honor, if this case doesn't present extraordinary circumstances justifying relief under 60(b)(6), then I can't imagine what circumstances would justify.

And I want to return to what I told the Court early on in my presentation. The lenders intentionally decided not to submit a credit bid when they had the opportunity to do so. That was the lenders' ability to check the process not yielding sufficient value to their liking, and they made a deliberate decision not to do so.

Under Section 363(f)(3), the debtors may sell free

and clear of a lien if the price at which the property is to be sold is greater than the aggregate value of all liens on property. Your Honor has seen this issue, I'm sure, many, many times. There's no controlling law in the Fifth Circuit. We and the lenders have cited basically the cases that go both ways. And basically, Colliers [sic], who is the expert in bankruptcy, holds that a market-tested auction process determines the value of all liens on property and allows the court to approve a sale that does not cover the face value of the lien. The secured creditor's ability and response to that is a credit bid right.

Your Honor, before I summarize, I just would like to address a few of the items in the cash collateral motion. In our cash collateral motion, we seek cash collateral for a week. Very small amount of money, for just a week. And why do we seek it for a week? As I said, to try to document this transaction.

The lenders have made a number of statements and arguments that are just flat wrong. First, they argued the LOI is not signed. I told the Court before that the document before the Court is signed. Second, they said it was a failed and admittedly flawed sale process. For the reasons I've discussed, it is not -- it is not such.

Then they say the transaction is not in the best interest of the estate, and we haven't provided an explanation

why conversion is not in the best interest of creditors. But we have done so, Your Honor, and the evidence will show.

They also say months of -- actually, as I said, of hiding the debtors' lack of finance -- fundamental accounting records and internal controls from the Court and the parties. You've heard my concern with those statements, which will not be true, and really cast aspersion on the integrity of Pachulski Stang, FTI, and Raymond James, who have been working hard throughout this case to generate value. To now be told that we have been hiding things from the Court and the lenders is irresponsible.

They say the sale will cause harm because it will increase the administrative insolvency in this case. That is not correct, Your Honor. The testimony will be that whatever unpaid administrative claims exist today, and the lenders grossly overstate it, the debtors estimate having sufficient money to pay all non-rent administrative claims until closing, both in this week -- one-week budget and the budget that would be presented to the Court next Monday.

They say the headline purchase price will not be obtained -- attained. Well, again, they've misconstrued the Oak Street contribution. It's not a deduction. And the evidence -- and they say the evidence will show that they're inflated, all the estimates are inflated. And again, while the numbers are an estimate, they are not inflated, and Your Honor

will be the one to determine whether you believe Mr. Healy's testimony that he believes that the debtors have a reasonable shot of reaching it.

They also say that the conversion of the cases to Chapter 7 will yield a large return. As I mentioned, we categorically reject that.

And with respect to their argument that we can't be trusted with budgeting -- putting aside that all we have, Your Honor, is a one-week budget, okay? They said we missed 15 of 18 budgets. And as I said, the big issue early on in this case was sublease rent; but over the last eight weeks, from June 2 to July 21st, we've done two and a half percent better on operating receipts, 15.9 percent better on operating disbursements, and 25.4 percent better on cash flow.

So it's convenient to say we missed projections and to try to hammer us on what happened early in the case; but if you look carefully, as I know the Court will, you will see that over the last two months that is not true.

And they say why do you need professional fees for the next week, because you already got your $400,000 carve-out? Your Honor knows the time and effort that went into last week, Your Honor knows the time and effort that goes into a hearing today preparing multiple witnesses.

Unfortunately, as has been the case from the beginning, we're spending millions of dollars fighting with the

lenders. So, yeah, that $400,000, which is available to all professionals, I got to believe is pretty much close to exhausted by the end of today.

Your Honor, if you're going to give the debtor the go-ahead to try to document this transaction, to answer questions the Committee has, questions the lenders have, and honestly, I'm sure, questions Your Honor has, it's only appropriate that professionals be paid to do so. And again, I think the amount set forth in the budget, even for this one week, are less than what we will end up incurring.

They say there's no adequate protection, but if the case shuts down, there will be no revenue stream. That's what they seem to miss. If we shut down, you're not going to be able to generate the money in the budget. So we're essentially saying keep the company alive for a week, let us use the money -- and it shows, I think, there's $30,000 degradation in their protection package. Otherwise, they are adequately protected.

And then they talk about the 363(f) and contractual provisions.

Lastly, Your Honor, they say that the estate is administratively insolvent and present evidence of 30 and a half million dollars. That is wrong. That includes seven and a half million of August rent, which is just made up. We expect rent to be deferred. To the extent it's not deferred,

there's a minor amount that -- from the landlords who don't accept the deal. But that's in the hundreds of thousand dollars.

They say Raymond James back-end financing fee is an administratively insolvent amount. No, that's paid from the carve-out.

And they point to the fact that we're not paying 503(b)(9) claims. Well, Your Honor has seen a lot of cases that doesn't pay 503(b)(9) claims. So you ignore that, Your Honor, and you ignore the over $2 million that Pachulski and FTI are over budget, you have amount, no question, administrative claims that may not get paid in this case. But the key point for Your Honor and for other case constituents is whether from hereon in there is an expectation of further administrative insolvency, and the evidence will show that it's not.

So, in summary, Your Honor, the debtors request the Court authorized the debtor to work towards documenting the ARKO and Oak Street transaction. And we don't ask for approval of it at this time, only a determination that the lenders do not have an unequivocal veto right. And we understand that the Court's approval will wait for next week, where the Court will also rule on the many other objections that were filed to the motion, which we will work on to resolve.

If the Court does not agree with us and determines

that the lenders have a veto right, then we would request that the Court issue an order why these cases should not be dismissed. The lenders aren't financing these cases anymore. They intentionally watched the sale process to see if it produced a result they liked; failed to credit bid; and rejected a market-tested sale without [sic] any rational economic actor would do, and elected not to credit bid. They haven't indicated any willingness to fund any profit.

Nobody else other than the lenders stand to benefit in a 7. Rather, the lender has state law remedies available to it, and the Court should allow them to go exercise those state court remedies as opposed to clogging this Court's docket.

They haven't indicated any willingness to fund any process. Nobody else, other than the lender, stands to benefit in a 7. Rather, the lender has state court remedies available to us, and the Court should allow them to go exercise those state court remedies as opposed to clogging this Court's docket. So under these facts, if the Court cannot proceed to a sale, the debtor should dismiss the cases rather than convert.

Finally, Your Honor, I would like to move into evidence, Exhibits 1 through 13, which were reflected on the debtor's second amended witness and exhibit list, filed at Docket 1197. And of course, I'm prepared to answer any comments Your Honor has. And after Your Honor has opening statements from other parties, we are prepared to go forward

with the evidentiary aspect of today's hearing. Thank you, Your Honor.

THE COURT: All right. Thank you, Mr. Pomerantz. I'm going to wait on the admission of the exhibits.

Let me ask. Ms. Reckler, you're going to tell me about 1182?

MS. RECKLER: No, Your Honor. I know to stay out of other people's business when it doesn't involve me.

THE COURT: NoO, no, no. It's -- I -- your Sorrento order.

MS. RECKLER: Yes, Your Honor.

THE COURT: 1182 has been uploaded.

MS. RECKLER: Yeah, we're all set, Your Honor.

THE COURT: I got it. It's -- you're welcome to stay and listen. You're also welcome to go. Thank you very much.

MS. RECKLER: Thank you, Your Honor.

THE COURT: Thank you. All right. Mr. Elrod, do you want to respond? Or you certainly get the opportunity to make opening.

MR. ELROD: Thank you, Your Honor. John Elrod, for the record, on behalf of the -- John Elrod, for the record, on behalf of First Horizon Bank as the DIP agent. Ms. Heyen will cover the opening for the lenders.

THE COURT: All right. Thank you. Sorry about that, Ms. Heyen.

MS. HEYEN: No problem, Your Honor. I promise I won't go on for an hour, so I'll try to make this short and to the point.

Your Honor, Shari Heyen of Greenberg Traurig on behalf of the DIP agent, who's First Horizon Bank. And so, Your Honor, after spending almost 50,000, or excuse me, $50 million in post-petition DIP financing, the debtors produced no qualified bids, no qualified bidders, no binding asset purchase agreement, no signed agreement at the end of the day, and no deposits. And attached to the status report that the debtors filed late one evening is a nine-page, unsigned letter from a potential bidder who we understand never even put up a deposit. And that was the outcome, after spending $50 million in post-petition financing.

The lenders have been faithfully and in good faith, extending post -- extended post-petition financing. We were told that the money would be used to get to a robust auction where qualified bidders would show up. Even on July 21st, the debtor's professionals were telling us that one of the bids came in around $97 million. However, on August 1st, which was the eve of the auction, the debtor's professionals told us that they might, might be able to get us $10 million, and that was a shocking result, and of course, frustrating.

The DIP lenders were pressured into loaning another $9.5 million to get us to an auction. A process, again, that

resulted in a draft letter agreement and a statement that maybe, just maybe, we could get $20 million. Upon realizing that the process had failed on the eve of the auction, which was August 1st, the debtor's professionals asked us for a release price, which we gave them at 9 a.m. on August 2nd. They said they wanted a target to shoot for, so we gave them a number. We did that, and their response was not one of shock, not one of disgust, one of thank you, we've got it.

When we were at the auction on August 2nd, or I don't know if there even was an auction because we asked if we were having an auction. We weren't -- that question was never answered. We asked again and again. We sat in a conference room for over eight hours. We maybe got 10 or 15 minutes of dialogue and update from the debtors' team. There was no record.

We asked for a record. We asked for a transcript to be taken. None of that was ever done. We have emails from the debtor's team telling us that we weren't even going to go on the record on August 7th. Excuse me, on August 2nd.

Your Honor, the debtors talked a lot about the bid procedures, so I'll just address that briefly. Your Honor, we feel like the debtors have ignored the Court's bid procedures. The bid procedures order at Docket Number 701 referenced by debtors' counsel shows that on July 21st, that was a deadline to submit qualified bids. None were submitted. That was the

deadline to come up with a stalking horse. None was ever surfaced.

On July 28th, 2023, at 10 a.m. Eastern, an auction was supposed to be held. The debtors unilaterally moved that to August the 2nd. Promptly after the auction, the notice of successful bidder was supposed to be filed. There was no successful bidder. All we got was a nine-page, unsigned, non-binding draft document.

On August 3rd, the adequate assurance objection deadline was supposed to occur but that's been moved to an indefinite date. And today, Your Honor, we were supposed to be before you on a sale hearing, and obviously, that's not happening either. The bid procedures order provides that August 15th was the deadline to close the transaction. That's not happening either.

Attached to Your Honor's order at Docket 701 is a laundry list of gating items that have to be met before we can even get to an auction. There are bid requirements that are set out. These are bid requirements, they're not suggestions. The debtors wanted -- they -- their own bid procedures say that among other things, that the bidder has to -- must, must deliver to the parties an irrevocable binding offer for the purchase of the assets. Included in the irrevocable offer were things like you must clearly state the list of assets and liabilities that you're picking up or leaving behind. You must

accompany your documents with an executed transaction document, including a draft asset purchase agreement. The bid must be accompanied by a 10 percent cash deposit. That never happened. The documents have to identify all contracts that were being assumed and assigned. Again, Your Honor, that never happened and there's a lot more features in the bid procedures, Your Honor.

The debtors and the potential bidders were supposed to honor the terms of the bid procedures. Then after -- only after all of those requirements were met, were there, was there supposed to be an auction. Again, there was no starting bid. They didn't have one. They asked us for a release number. We gave it to them, and again, there was no alarm. There was no shock. It was just, thank you.

All of this was supposed to -- all the bid procedures were supposed to culminate in a successful bid. And again, as Your Honor knows, that never happened.

Rather than admit that their expensive process failed, they now try to shift the focus to the lenders who have funded a $50 million process and $218 million, all in. The expenditure of our cash collateral has yielded nothing as we sit here today. And so for the first time, the debtors are now disclosing to Your Honor and to others that, and I'll just quote from the status report, and Mr. Palmer has quoted from it too, that the "debtors lacked complete and current financial

statements, that they were unable to generate accurate current store, profit level -- profit and loss statements, that the debtors lacked complete historical information, that the debtors were missing leases, contracts and other agreements integral to the management of the business." The debtors did not maintain detailed store-level accounting on unamortized fuel branding discounts, et cetera, et cetera. And they also say in their status report that they had considerable difficulties even populating a data room with the most fundamental basic data.

But with all of those admitted deficiencies, the debtor -- debtors now try to point the -- paint the lenders with an intemperate email by a frustrated banker who's not the agent and doesn't speak for our group, who watched the sale process go down in flames. And the auction, if there ever one is -- if there ever was one, Your Honor, is closed. There were no bids. There was no deposit. All we got, again, on the evening of August 4th, was an announcement on the record that the auction had closed and that the proceeds had produced only an unsigned letter of intent in which we might, and again, might, get $20 million. So the process has failed to or this failed process has led to yet another request to use our cash collateral to fund another week to see if the debtors can get to the deal -- get to a deal.

We have spent close to $50 million trying to get to a

deal, and the lenders believe that they're probably going to get more in a Chapter 7 liquidation, and they're taking steps that any reasonable lenders would take under these dire circumstances. We believe that these estates are administratively insolvent. Currently, we estimate -- our financial advisor estimates that there's about $30 million in unpaid administrative expenses, and those expenses are climbing. So right now, there are unpaid taxes of about 10 and a half million dollars. The vendors are being stretched so that this case could be financed. August rents haven't been filed -- paid, and there are other categories of expenses that will continue to climb.

These are -- the 30 million represents the unpaid admin expenses just through July 31st. It's now August 7th, and those expenses are -- will continue to go up. That means the debtors are digging a deeper insolvency hole than they are showing the Court and the public. We feel like there's a complete lack of transparency here with the numbers and the budgets.

And Your Honor, no one's more disappointed in all of this than the lenders. We are owed $218 million, all in. The debtors hope they can get us $20 million after they've spent $50 million in post-petition financing. We -- they have now produced, I guess an -- a non-binding letter of intent after all of their efforts. And I think all of us will admit that

the letter that was received is ambiguous.

We feel like we've been strung along. We've financed a process that was supposed to yield hundreds of millions of dollars. And yet as we sit here today, all we have is that the -- all that our $50 million has produced is a non-binding letter of intent. All the sale procedures deadlines have been blown through. They spent all of the money and now they're asking for more.

And so, Your Honor, I think that you're now and maybe even for the first time, getting a flavor for why the lenders don't think that they should be forced to fund into a deepening hole where there is not yet, after all the time and money has been spent, a binding offer. Your Honor, the debtors have a fiduciary obligation to the creditors. Yet their papers focus on saving jobs of employees of third parties, some of whom they've sued in litigation and who are not even creditors of these bankruptcy estates. That's not what the Bankruptcy Code requires. They owe a fiduciary obligation to their creditors, not just third parties who are not creditors of these estates.

Here, the general unsecured creditors are getting $0 according to the debtors, and the DIP loan will not be repaid under the scenario floated by the debtors that you just heard. Your Honor, these are regional banks. They serve customers and their regions are in the southeast part of the United States. They are taking action that any reasonable lender would do

under these dire circumstances, and they are respectfully requesting that the use of cash collateral be denied, that we move into an orderly wind down process with either a Chapter 11 trustee or convert these cases to a Chapter 7 to preserve any remaining value for the benefit of the creditors. Thank you.

THE COURT: So before you go. So and I appreciate the statement, so let's kind of work backwards. One, and you know, sometimes what you learn along the way, while it doesn't have monetary value, I mean, $50 million has shown us a lot about what this group of assets is worth.

And I'm, you know, a couple of things have become very apparent to me. Number one, you know, this group of banks never should have been a DIP lender. I -- they didn't do it by choice. I know that. It's also clear to me that, you know, that there's a problem with -- between the professionals. I got that too. But I'm not focused on any of that.

I've got a group of assets that I'm trying to figure out what to do with, and those assets are not -- they're not pieces of concrete that don't have any effect on the world around them. I mean, I've been through the process where gas tanks leak and when certifications aren't kept up. I mean, I've been through all of that and a lot of these are in populated areas and, you know, I can tell the story, you're old enough to remember, you know, with -- there was a certain gas delivery company whose pipeline ran across the back of a number

of residential homeowners and there was a great aquifer and people for years had you know, had watered their lawns from these aquifers. And I do remember a set of circumstances, we made a really cool video where we went out and lit the sprinklers because it would shoot flame. You know, that, that's -- I -- that's a real story and it has impressed upon me the fact that we all need to be sensitive to a lot of different things.

So I actually think the process, and I don't attribute anything to any of the professionals. I think you're all doing what you think you ought to be doing for your respective clients. Just a horrible set of facts. And maybe there are people who someday will have to answer for this. Maybe not, I don't know.

But we're not going to make the situation worse. And as I look at this, I mean, the sale process didn't work. I mean, I appreciate the fact that the debtors believe they have something. It's not what they wanted. I don't believe that anybody went into this thinking that this was the outcome. I certainly know you all didn't, and I don't think that --

MS. HEYEN: It's not what we were told. Okay. We were told in the hundreds of millions of dollars, hundreds of millions.

THE COURT: And you know that for whatever the conversation was, no one knew, because you don't know what

happens in an auction until someone shows up and bids. You don't. People can always change their minds. So I'm not going to attribute anything to that.

But I've got a group of assets that is dispersed and they are potentially problematic. They affect an awful lot of people. And I'll -- somewhat of a grain of salt. I take your economic argument about they're not employees of the debtors, although I care about everybody that works for a living, I do. But the impact goes a lot further than that.

I've got it -- it's just an unusual structure and I -- I'm worried about what happens. So tell me and I'm not predisposed on any of this. I'm going to talk to Mr. Gibbs in just a second, and I'm going to put him square in the middle of everything, just so he knows it's coming.

What are we realistically supposed to do? And I want to walk through this with you. You know what I did prior to taking this job. This case doesn't work with a Chapter 7. We haven't even talked about who's going to fund it and it's -- the estimate I heard is way low. You know that because you did some of that work too. It's also unlikely that it's handled very efficiently so I don't really see that as a really good alternative.

I probably owe the landlords stay relief because I've made them -- I've put them in a horrible situation as well, given what's happened. I mean, they've lost a ton of money

too, and will continue to do so. And they don't really know what their exposure is until they get out there and walk through each of those facilities. And while you can say, well, there's a tenant out there, they can be responsible too. Yes, but you can only get what you can get. And I recognize that it's a horrible situation for the landlords as well.

But what are we supposed to do in terms of, you know, how do we bring it into the process? I agree with you. You don't need to argue. You don't need to argue to me that where we end up today doesn't track the bid procedures. Probably tracks reality just in terms of what happened, but it doesn't track the bid procedures. And I am -- I do think I have the discretion to create remedies where I see the right outcome. I don't see the right outcome here. I just don't see it.

And but you can't just walk away from this. This is a mess. And, you know, I can say, okay, they're all yours. You know, you got to think about that. Do you really want that? Because again, I don't think anybody knows once it all starts to fall apart, what that's going to look like. But you need to think about how we get from point A to an end, and if it is simply lifting the automatic stay for the landlords, maybe it's lifting the automatic stay for you. Maybe it's, you know, maybe it's the quintessential dirt for debt. In a contested matter, I don't think you want that, but, you know, you ought to think through all those things.

I want an answer to the problem. It's not that people are good guys, people are bad guys. I think everybody tried. This is a mess. Process didn't work. This didn't work. Nobody's to blame for that. That is -- that's a professional standing here arguing a position.

There may be other people that contributed to this, I don't know. Haven't been brought to me yet. But everybody tried, failed. So let's all recognize that it failed and let's try as this, as much as we can, to come up with a solution that now minimizes harm. That's what I want. And I'm trying to give you some comfort.

I'm not going to make you spend more money involuntarily. You may decide you want to. You may decide you need to because it helps your downside. But I'm not going to make you spend more money today, not based on what I've heard.

But I want a solution. I want a solution that is -- that just makes sense. I want a solution that minimizes any potential environmental concerns. I want a solution that gives people who have a genuine pecuniary interest in the continuation of these small businesses, the opportunity to try and continue with a small business.

This debtor's done. You know, there may be some litigation claims. There may be some other pieces of property, okay? Those are easy to deal with. Those aren't going to go anywhere. They aren't going to hurt anything, but, these, you

know, these businesses that, you know, that have tanks in the ground, I want a solution where I have somebody responsible, in charge, all the time.

So, again, I don't expect you, Ms. Heyen, to have an answer to this today. I'm telling you what's on my mind. I'm telling you what's bothering me. I want to get out of your concern, and it was a very passionate argument, made concisely. I'm not going to make you spend any more money today on looking at something that you don't believe in, that I don't know that anybody believes in. It's just a we're doing the best we can. But I want a solution to the problem.

So let me -- we'll make another circle. But let me talk to Mr. Gibbs for a second.

MS. HEYEN: Okay.

THE COURT: Mr. Gibbs.

MS. HEYEN: Thank you, your Honor.

THE COURT: Thank you. Mr. Gibbs. Good afternoon.

MR. GIBBS: I brought my water because I'm not sure how long you're going to keep me up here.

THE COURT: No, I -- it's -- I promise not to do this too long. I tried to give you a view into sort of where I am. We've got a relationship problem. Just got to recognize that.

MR. GIBBS: Yeah.

THE COURT: And I've got a problem.

MR. GIBBS: So do we.

THE COURT: And I know, and I don't see a scenario where there's a meaningful distribution to your constituents. Maybe I'm wrong about that. I don't know. I'm not trying to evaluate litigation options.

This may be one of those, you know, where you take a playbook or you take a play out of, you know, I think this is actually Pachulski's playbook where you start looking at and saying, best we can get is we want to make sure that all of our vendor constituents, you know, don't have to worry about 547s in the future. I don't know -- you guys will figure all of that out.

What I want is -- I want ideas about what we do with the problem assets that we have, which are those individual locations. And if it is a dismissal, I'm not adverse to that. That's got -- that doesn't let me solve many problems. It just punts it and I'm not a guy that likes to punt things. I like to finish what I start.

I don't see, again, having spent a lot of time on the Chapter 7 side, I view that as a punt as well. An underfunded Chapter 7 trustee dealing with geographically diverse assets is a disaster waiting to happen. And so I'm looking for a solution.

We have no money. We have a continuing cash burn. I have no doubt that there is a scenario where we are administratively insolvent. I don't know what that means as I

sit here today, but I need somebody to say, let's get focused on fixing the problem. And maybe that is, you know, maybe that is just a lifting of the stay to let the landlords go take their facilities and since they are well-capitalized and they are certainly more knowledgeable than I am about all of these things, or I certainly hope they are, and let them go start dealing with those issues on a one-off basis and we focus on some of the other things.

I got all of that, but I need a voice in the middle that can keep people focused, and if money needs to be spent, then people need to understand what they get for spending money. I don't have a lot more guidance that I feel comfortable in giving you because I'm going to cross over the line of being an advocate very quickly here, and that's not what I intend to be doing. But I do have a problem. I see the problem. It may be bigger than what everyone else thinks the problem is, but at the end of the day, it's my responsibility and I take that very seriously.

So what can I do to empower you? Because you're the one person who really sits in the middle in all of this. What can I do to empower you to try and find a solution that no one's going to like, but is going to give me some comfort that appropriate safeguards or appropriately capitalized parties are overseeing, again, what I'm just going to call potentially problematic assets? And you know, with respect, whatever else

is there, that we figure out a economically rational way of dealing with it.

MR. GIBBS: We can try to respond to the overture and the invitation and try to continue to play a role that we see as our only really viable and valuable role, and that is to be the honest broker.

THE COURT: Right.

MR. GIBBS: This will be a terrible result for the unsecured creditors of this company under --

THE COURT: I understand.

MR. GIBBS: -- any potential possible outcome. We know that. We know that.

The advocates may say, therefore, sit down and be quiet. You don't have an economic stake in that. I view it entirely differently. I think my job is to try to make the best of a terrible situation. This is probably the worst train wreck that I've seen in the 45 years I've been doing this, ATP notwithstanding, so it's, you know, it's in -- it's on the short list, let's put it that way.

THE COURT: Sure.

MR. GIBBS: Very good professionals, very experienced professionals, all came into their respective roles with their eyes wide open. And that's part of the risk we all take.

What would I do directly? I know I've heard you say a number of times, I'm not going to order parties to mediation.

One of the parties that would need to be involved, and there may not be, and the debtor may say, I'm not going to waste five more minutes talking to lenders. The lenders may say, I'm not going to waste time, even five more minutes talking to the debtor. We're open for business and we'll talk to both parties, number one.

There's another one or two economic parties here that should be part of the discussions, and that's the party that surfaced late Friday afternoon, and that's the party that has, as you heard described, delivered a non-binding letter of intent that may or may not get to any kind of an APA, that may or may not get to the Court at some later date with the debtor's support, to be approved. What I don't want to have happen today is have any evidence regarding that transaction litter the record. It sounded like from the very lengthy and comprehensive statements that Mr. Pomerantz made is that he wanted a first bite at the apple at justifying the debtor's business judgment in approving that transaction. That's not before today. What they announced on the record Friday afternoon was they were not going to go forward with the sale motion. We're here today on their emergency motion to use cash collateral.

I'm not sure, and I asked my partner, Marcus Helt, exactly what he thought you meant when you said, I'm not going to make the lender spend any money. If you meant by that, I'm

not going to allow the debtor, over their objection, to use cash collateral, we have a very, very limited period of time, I believe, because it -- without the ability to use the proceeds from the sale of fuel or the products that are in the stores that the debtor operates, the debtor will not have any ability to pay even the next bill that comes in.

THE COURT: Right.

MR. GIBBS: What we saw in the budget that we really haven't been able to spend any time trying to dig into and get detail on, is a budget for a week that is essentially cash-flow neutral. I don't disagree with Mr. Pomerantz's characterization about the accuracy of late, of their projections regarding receipts and it's a pretty limited amount of money they're asking for authority to use.

I don't get the request to spend 680,000 for professional fees the next week. We're in this -- we're, as I said, we're all sophisticated advisors who came in with our eyes wide open. You take that out of the budget, they're going to be cash flow positive, if anything, for the next week.

THE COURT: Right.

MR. GIBBS: I don't think coming back here in a week and fighting over what currently would be postured as a contested sale hearing is the right answer either. I would like the Court to entertain the request of the debtor to use, on a non-consensual basis, absolutely those funds which are

necessary to provide the revenue stream that they're budgeting and to pay the payroll of the employees they have for at least a two-week period of time. So but I can't ask for the use of cash collateral. Only the debtor can.

The debtor's asked for a week and it leaves us in kind of a frustrating situation. We don't really have the time to, even if we got the parties to consent, to get somebody like Judge Isgur involved to try to mediate and get cooler heads to prevail. We need the party that may or may not show up with a checkbook to participate in those discussions. And we need just to try to find a solution.

None of what I heard is an acceptable solution. Like you, it is just saying, I give up. You know, they were in here for six months. They borrowed $50 million. They've incurred tens of millions of dollars in professional fees. It didn't work, so let's just dismiss the case. That leaves all of the causes of action that may have value, that may not -- they're gone in a dismissal, number one. Not even a Chapter 7 trustee could have the opportunity to look at them. I don't know if you could find a Chapter 7 trustee who would take the assignment knowing that, for the reasons you just described and you're full -- fully familiar with, they're going to be in an underfunded operating Chapter 7 with 800 underground storage tanks spread out over 25 states. To say that that's an acceptable solution is, I think, very far fetched.

I do think there is some benefit to considering -- it hasn't been filed. We're not asking for it today. In short order to come back and ask for the Court to consider whether or not into these circumstances a Chapter 11 trustee is appropriate if we -- if that is the condition upon which the lender would be willing to allow more of its cash collateral to be used or even fund further DIP financing to get to a fulsome, closed sale that is we all -- what we all believe to be the best that can be done and for a result that the lenders can live with.

There is such a level of distrust between the lender and the debtor, going both ways, that I don't think as I stand here today, that we'll be back in a week or two weeks with any meaningful hope of this process coming to a consensual resolution in the absence of further discussion or potential Chapter 11 trustee or a mediation.

So I'd like to take it in small bites. I'd like to have Your Honor consider giving the debtor a very short period of time to use cash collateral non-consensually for as skinny a budget as the Court is comfortable allowing them to spend. And I would like the parties to all tell the Court that they will sit in a room, stop calling each other names, and try to come up with parameters under which this debtor can survive to get to the best possible sale. And we're not there yet today at all.

THE COURT: Let me -- Ms. Heyen, let me ask you, and while, not -- I did not mean to be disrespectful. I was typing because I was trying to figure out whether Judge Lopez or Isgur were available.

MR. GIBBS: I didn't even notice.

THE COURT: Let me ask, Ms. Heyen, if I can get Lopez or Isgur relatively quickly, like in the next week or two, will you all consider a keep-the-doors-open budget? That means no professional fees. It just means keep the doors open.

MS. HEYEN: Your Honor, I'm happy to take that back to the agent if you can give me maybe five or ten minutes.

THE COURT: Absolutely.

MS. HEYEN: I think we will absolutely consider it. We just need some time to discuss it with our team.

THE COURT: Sure.

MR. ELROD: Your Honor, I do have --

MR. POMERANTZ: Your Honor?

MR. ELROD: I do have a response from our client since we've been in the courtroom. I apologize for communicating with the client when we're in the courtroom.

THE COURT: No, no.

MR. ELROD: I understand the urgency of the matter. The lenders are willing to, or the agent is willing to permit the use of cash collateral provided that there are no professional fees in the budget.

THE COURT: Okay. So let's do this and I don't know how, Mr. Wallen, since you're --

MR. POMERANTZ: Your Honor, can I respond? To the concept of mediation, your Honor?

THE COURT: Sure.

MR. POMERANTZ: Your Honor, you know, your -- that I'm a big fan of mediation. I've spent time with you in mediation and with (indiscernible) time, and we feel very highly about Judge Isgur and Judge Lopez. There's an economic reality that I think people are ignoring. Putting aside professional fees, Mr. Healy, this morning, and I, when I told him that the best we can get is a hearing next week if everything goes our way today, he said, we do not have the time. We need new financing.

So if we don't get new financing, put aside professional fees. Okay? We've worked for free before. We don't like it. We're going to do the right thing. Your Honor has always known that we and FTI and Raymond James, we will do the right thing.

But Mr. Healy will say that putting aside professional fees, if we don't get money in, we can't continue to operate. That's number one.

Number two, it's really not a question of convincing us of doing something. We don't have any more money. All we have is a proposal and a deal. So if the lenders want to take

it back, they want to take it back.

We can't give them anything. The only thing we can give them is a deal. And ARCO and Oak Street has steadfastly refused to pay any more money. So I don't know what we can do.

I do understand a lot of concerns about the letter of intent. I do understand people need to see a purchase agreement. So if the answer was, well, look, we think it is -- it's squishy, we'd like to get some questions answered. We'd like to be part of a documentation process and try to reach an overall deal. I totally get that, but I don't see really what we are going to accomplish in mediation unless it's to talk about the burial. If the talk is about a burial, and your Honor says, based upon what you've heard and all the open questions, we shouldn't proceed to the sale, yeah, we could of course have a conversation and a discussion on what's the appropriate way to bury this. But if it's really to potentially have some transaction that is going to do the thing -- the only way to do the things that Your Honor wants to be done, protecting the environment, protecting the employees, not making this a mess, not requiring a lot more money to be spent.

And again, I'll point out. We are not asking the lenders other than use of cash collateral to fund an additional dime. That was a key part of our transaction. We needed to have a deposit available upon signing the agreement and Court approval.

So, Your Honor, I'm all for mediation in many cases when there is a dispute that could be resolved. I just don't know what I have to offer in that dispute because we don't have a checkbook.

THE COURT: So, I can think, again, because I can't be an advocate, I can think of half a dozen ways out of this. I've just talked to Isgur. I want Mr. Wallen, I mean, you're going to have to coordinate with Mr. Pomerantz and if Isgur wants to get Pomerantz on the phone, he's certainly welcome to do that.

I need for you, one lawyer from the DIP lender, and one lawyer from the Committee to go down and see Judge Isgur. He says that he thinks he can find time within the next week to ten days. And I just want you to have a conversation with him.

But if I can see the path, I know that he can see the path because he taught me the path. So I want you to at least go have the conversation and see what the options are and then we can come back and figure out. We're not going home today until we have a plan. And if we have to come up with a stop gap cash collateral usage to, you know, for the next week or two weeks or whatever it is that you all agree to, until we figure out how we're going to proceed forward, all fine by me. But again, I'm in an uncomfortable position because I'm going, why can't you all see this? And I can't start saying but A and B and C and D and E.

I want you to go talk to Isgur, have a conversation about when he's available. Again, I have, you know, I have a -- he left out a word, and I think I know what it means, but I want you to go hear it from him and find out what he's got available. And I told him three people were coming down and you know, you can go hover around his door. If he's willing to take more, all fine by me. But I told him three people were going to come see him.

And for those of you --

MR. POMERANTZ: And (indiscernible) too, Your Honor?

THE COURT: Okay.

MR. POMERANTZ: It's okay if we call him?

THE COURT: Of course it is. Of course it is. And for those of you who are on video, I'm -- I've got two other matters I'm going to call. But when folks come back in the courtroom, then we'll recall the case and figure out what we're going to do either today or some other day. All right?

All right. Thank you, everybody. You're excused.

MS. HEYEN: Thank you, your Honor.

(Proceedings concluded at 4:04 p.m.)

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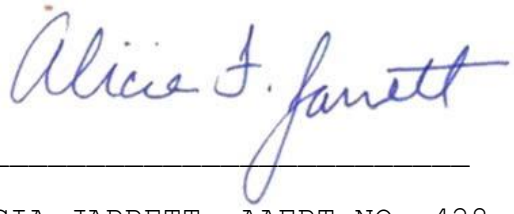
C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



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